

Eric B. Fastiff (182260)
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel: (415) 956-1000
Fax: (415) 956-1008
efastiff@lchb.com

Attorneys for Plaintiff Toy-Knowlogy Inc.

Steven N. Williams (175489)
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road
Burlingame, CA 94010
Tel: (650) 697-6000
Fax: (650) 697-0577
jcotchett@cpmlegal.com
swilliams@cpmlegal.com
etran@cpmlegal.com

*Attorneys for Plaintiffs Toy-Knowlogy Inc. and
CAE Sound*

Phillip J. Duncan (Admitted Pro Hac Vice)
DUNCAN FIRM, P.A.
900 South Shackleford, Suite 725
Little Rock, Arkansas 72211
Tel: (701) 228-7600
Fax: (701) 228-0415
phillip@duncanfirm.com
richard@duncanfirm.com
justin@duncanfirm.com

Daniel S. Robinson (244245)
ROBINSON CALCAGNIE ROBINSON
SHAPIRO DAVIS, INC.
19 Corporate Plaza Drive
Newport Beach, California 92660
Tel: (949) 720-1288
Fax: (949) 720-1292
drobinson@rcrlaw.net
dslavic@rcrsd.com

Attorneys for Plaintiffs Everett Ellis, et al.

Attorneys for Plaintiffs Everett Ellis, et al.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA — SAN FRANCISCO DIVISION

**IN RE CAPACITORS ANTITRUST
LITIGATION**

THIS DOCUMENT RELATES TO:

*Indirect Purchaser Plaintiff Actions:
Case Nos. 14-cv-03815, 14-cv-04403, 14-
cv-04657, 14-cv-04677, 14-cv-04782, 14-
cv-04742, 14-cv-03264*

Master File No.: 14-cv-03264-JD

**STIPULATION AND [PROPOSED] ORDER
APPOINTING INTERIM INDIRECT
PURCHASER PLAINTIFF CLASS AND SUB-
CLASS COUNSEL**

Judge: The Honorable James Donato

1 WHEREAS, the Court has received and considered Federal Rule of Civil Procedure 23(g)
2 applications for appointment as Indirect Purchaser Plaintiff Interim Co-Lead Counsel;

3 WHEREAS, on October 29, 2014, at the Initial Case Management Conference, the Court
4 considered the arguments and comments of counsel with respect to such appointments;

5 WHEREAS, the undersigned recognize the need for Interim Co-Lead Class Counsel to
6 coordinate litigation efficiently on behalf of all Indirect Purchaser Plaintiffs;

7 WHEREAS, the undersigned also recognize that appointment of Interim Sub-Class
8 Counsel would ensure adequate representation in the event a conflict of interest arises between
9 the two indirect purchaser groups;¹

10 WHEREAS, in the interest of securing the just, speedy, and inexpensive determination of
11 these proceedings, pursuant to Federal Rules of Civil Procedure 1 and 23(g)(3) and Local Civil
12 Rules 1-2(b) and 16-10(b)(15), it is hereby **AGREED**:

13 1. *Interim Lead Class Counsel for Indirect Purchaser Plaintiffs:*

- 14 a. Cotchett, Pitre & McCarthy, LLP;
15 b. Duncan Firm, P.A.

16 2. *Duties and Powers of Interim Lead Counsel.* Interim Lead Counsel shall be
17 responsible for the conduct of the litigation on behalf of the Indirect Purchaser Plaintiff Class as
18 follows:

- 19 a. To promote the orderly and efficient conduct of this litigation and to avoid
20 unnecessary duplication and unproductive efforts;
21 b. To act as spokesperson (either personally or by designee) for the Indirect
22 Purchaser Plaintiff class at pretrial conferences;
23 c. To enter into stipulations (either personally or by designee) necessary for

24 ¹ See *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 289 (3d Cir. 2011) (en banc) (in antitrust class
25 action, affirming certification of settlement class including two indirect purchaser subclasses: an
26 “Indirect Purchaser Reseller Subclass” and an “Indirect Purchaser Consumer Subclass.”), *cert.*
27 *denied*, 132 S. Ct. 1876 (2012). “[W]here a class is found to include subclasses divergent in
28 interest, the use of subclasses may be appropriate and is designed to prevent conflicts of interest
in class representation.” *Id.* at 326 (internal quotation and citation omitted). See also *In re TFT-
LCD Antitrust Litig.*, 267 F.R.D. 291, 305 (N.D. Cal. 2010) (“the Court finds it appropriate to
certify separate classes of direct purchasers of TFT-LCD panels and direct purchasers of TFT-
LCD products”).

1 the conduct of the litigation with opposing counsel.

2 3. *Interim Sub-Class Counsel for the First-Level Indirect Purchaser Plaintiffs*²:

- 3 a. Lieff, Cabraser, Heimann & Bernstein, LLP;
- 4 b. Cotchett, Pitre & McCarthy, LLP.

5 4. *Interim Sub-Class Counsel for the Indirect Product Purchaser Plaintiffs*³:

- 6 a. Robinson Calcagnie Robinson Shapiro Davis, Inc.;
- 7 b. Duncan Firm, P.A.

8 5. *Duties and Powers of Sub-Class Counsel on behalf of their respective Sub-Class:*

9 a. To conduct all pretrial, trial, and post-trial proceedings on behalf of their

10 respective proposed Plaintiff Sub-class;

11 b. To sign any pleadings, motions, briefs, discovery requests or objections,

12 subpoenas, or notices on behalf of their respective proposed Plaintiff Sub-class, but, in any event,

13 no motion may be filed nor discovery served by any Plaintiff without the approval of their

14 respective Sub-class Counsel, absent leave of Court;

15 c. To determine and present (either personally or by designee) in motions,

16 briefs, oral argument, or in such other fashion as may be appropriate, the position of their

17 respective proposed Plaintiff Sub-class as to all matters arising during pretrial, trial, and post-trial

18 proceedings;

19 d. To conduct and coordinate discovery (either personally or by designee) on

20 behalf of their respective proposed Plaintiff Sub-class consistent with the requirements of the

21 Federal Rules of Civil Procedure, including the preparation of interrogatories, requests for

22 production of documents, requests for admissions, and the examination of witnesses in

23 depositions, as well as any motion practice related thereto;

24 e. To make and supervise all work assignments for their respective proposed

25 Plaintiff Sub-class;

26 f. To monitor the activities of their respective Plaintiff Sub-class counsel and

27 ² Defined as purchasers of capacitors from distributors.

28 ³ Defined as purchasers of products containing capacitors.

1 to implement procedures to ensure that schedules are met and unnecessary expenditures of time
2 and costs are avoided;

3 g. For their respective proposed Plaintiff Sub-class, to collect time and
4 expense reports from each firm (either personally or by designee), including paralegals and any
5 other staff members whose time is expected to be included in any fee petition, and to review such
6 time and expense reports;

7 i. To this end, all Plaintiffs' counsel shall contemporaneously keep a
8 daily record of their time spent and expenses incurred in connection with this litigation, indicating
9 with specificity the hours and particular activities performed;

10 ii. By the tenth day of each month, each firm that may seek an award
11 (or approval) of a fee or reimbursement of expenses by the Court, shall provide its corresponding
12 Sub-class Counsel a report summarizing, according to each separate activity, the time and
13 expenses spent by its attorneys, paralegals or staff during the preceding month (and the ordinary
14 billing rates of such personnel in effect during the month) and the accumulated total of the firm's
15 time, hourly rates, and expenses to date;

16 iii. All Plaintiffs' counsel shall endeavor to keep fees reasonable and to
17 choose the most appropriate level of staffing for the tasks required in this litigation; and

18 iv. Sub-Class Counsel shall be responsible for preparing any
19 application for an award (or approval) of fees and reimbursement of expenses by their respective
20 proposed Plaintiff Sub-class, consistent with the Rules and Orders of this Court. The provisions
21 of this subparagraph do not limit the discretion of Sub-class Counsel in basing an allocation of a
22 fee award among respective sub-class Plaintiffs' counsel based on hours, a percentage-based
23 allocation, a combination of the two, or any other reasonable method of allocation, consistent
24 with the Rules and Orders of this Court.

25 h. To make and collect assessments (either personally or by designee) from
26 some or all of their respective Plaintiffs' counsel for the purpose of paying the costs necessary to
27 prosecute the case;

28 i. To ensure that work assignments are not given to any firm that has not

1 promptly submitted its time and expense records or paid its assessments;

2 j. To employ and consult with experts;

3 k. To call meetings of their respective Plaintiffs' counsel when deemed
4 appropriate;

5 l. To conduct settlement negotiations with defendants on behalf of their
6 respective proposed Plaintiff Sub-class;

7 m. To ensure that all of their respective Plaintiffs' counsel are kept informed
8 of the progress of this litigation as necessary; and

9 n. To otherwise coordinate the work of their respective Plaintiffs' counsel,
10 and perform such other duties as Co-Lead Counsel deems necessary and appropriate based upon
11 their judgment and consideration or as authorized by further Order of the Court.

12 6. *Steering Committee.* Sub-Class Plaintiff counsel may convene separate Steering
13 Committees. No counsel may be a member of more than one Steering Committee.

14 7. *Service.* Sub-Class Counsel are hereby designated as counsel for all of their
15 respective Plaintiffs upon whom all notices, orders, pleadings, motions, discovery, and
16 memoranda which are not otherwise served via the Court's ECF system shall be served, and
17 Defendants shall serve papers on Indirect Purchaser Plaintiffs by serving the respective Sub-Class
18 Counsel.

19 8. *Binding Effect.* Any agreement reached between Defendant(s) and Sub-class
20 Counsel or their designee(s), shall be binding on all other respective Plaintiffs' counsel
21 representing that Sub-class.

22 9. *Privileges Preserved.* No communication between or among any of Plaintiffs'
23 counsel shall be taken as a waiver of any privilege or protection to which Plaintiffs would
24 otherwise be entitled.

IT IS SO STIPULATED AND AGREED:

Dated: October 30, 2014

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ Steven N. Williams

Joseph W. Cotchett (36324)
Steven N. Williams (175489)
Elizabeth Tran (280502)
840 Malcolm Road
Burlingame, CA 94010
Tel: (650) 697-6000
Fax: (650) 697-0577
jcotchett@cpmlegal.com
swilliams@cpmlegal.com
etran@cpmlegal.com

Attorneys for Plaintiffs Toy-Knowlogy Inc. and CAE Sound

Dated: October 30, 2014

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Eric B. Fastiff

Richard M. Heimann (63607)
Eric B. Fastiff (182260)
Brendan P. Glackin (199643)
Dean M. Harvey (250298)
Lin Y. Chan (255027)
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel: (415) 956-1000
Fax: (415) 956-1008
rheimann@lchb.com
efastiff@lchb.com
bglackin@lchb.com
dharvey@lchb.com
lchan@lchb.com

Attorneys for Plaintiff Toy-Knowlogy Inc.

1 Dated: October 30, 2014

SAVERI & SAVERI, INC.

2 By: /s/ Guido Saveri

3 Guido Saveri (22349)
4 R. Alexander Saveri (173102)
5 Lisa Saveri (112043)
6 Melissa Shapiro (242724)
7 Travis L. Manfredi (281779)
8 706 Sansome Street
9 San Francisco, CA 94111
10 Tel: 415-217-6810
11 Fax: 415-217-6813
12 guido@saveri.com
13 rick@saveri.com
14 lisa@saveri.com
15 melissa@saveri.com
16 travis@saveri.com

*Attorneys for Plaintiffs Michael Brooks, et al.
and CAE Sound*

12 Dated: October 30, 2014

MINAMI TAMAKI, LLP

13 By: /s/ Jack W. Lee

14 Jack W. Lee (Cal. SBN 71626)
15 Derek G. Howard (Cal. SBN 118082)
16 Aron K. Liang (Cal. SBN 228936)
17 Sean Tamura-Sato (Cal. SBN 254092)
18 360 Post Street, 8th Floor
19 San Francisco, CA 94108
20 Tel: (415) 788-9000
21 Fax: (415) 398-3887
22 jlee@minamitamaki.com
23 dhoward@minamitamaki.com
24 aliang@minamitamaki.com
25 seant@minamitamaki.com

Attorneys for Plaintiff Steve Wong

1 Dated: October 30, 2014

DUNCAN FIRM, P.A.

2 By: /s/ Phillip J. Duncan

3 Phillip J. Duncan (Admitted *Pro Hac Vice*)
4 Richard Quintus (Admitted *Pro Hac Vice*)
5 Justin Zachary (Admitted *Pro Hac Vice*)
6 900 South Shackleford, Suite 725
7 Little Rock, Arkansas 72211
8 Tel: (701) 228-7600
9 Fax: (701) 228-0415
10 phillip@duncanfirm.com
11 richard@duncanfirm.com
12 justin@duncanfirm.com

Attorneys for Plaintiffs Everett Ellis, et al.

9 Dated: October 30, 2014

ROBINSON CALCAGNIE ROBINSON
SHAPIRO DAVIS, INC.

11 By: /s/ Daniel S. Robinson

12 Daniel S. Robinson (244245)
13 Donald H. Slavik (Appearance *Pro Hac Vice*)
14 19 Corporate Plaza Drive
15 Newport Beach, California 92660
16 Tel: (949) 720-1288
17 Fax: (949) 720-1292
18 drobinson@rcrsd.com
19 dslavic@rcrsd.com

Attorneys for Plaintiffs Everett Ellis, et al.

18 Dated: October 30, 2014

LAW OFFICES OF ALEXANDER M. SCHACK

19 By: /s/ Alexander M. Schack

20 Alexander M. Schack, Esq. (SBN 99126)
21 16870 West Bernardo Drive
22 San Diego, California 92127
23 Tel: (858) 485-6535
24 Fax: (858) 485-0608
25 alexschack@amslawoffice.com

Attorney for Plaintiff David A. Bennett

26 Pursuant to Local Rule 5.1(i)(3), I attest that all other signatories listed, and on whose
27 behalf the filing is submitted, concur in the filing's content and have authorized the filing.

28 Dated: October 30, 2014

By: /s/ Eric B. Fastiff

1 **PURSUANT TO STIPULATION, AND FOR GOOD CAUSE SHOWN, IT IS SO**
2 **ORDERED.**

3
4
5 Dated: _____

THE HONORABLE JAMES DONATO
UNITED STATES DISTRICT JUDGE